

By: Giddings

H.B. No. 2516

A BILL TO BE ENTITLED

AN ACT

relating to the installation of smoke detectors in certain leased dwellings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 92.251, Property Code, is amended to read as follows:

Sec. 92.251. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

(1) "Bedroom" means a room designed with the intent that it be used for sleeping purposes.

(2) "Dwelling[~~, "dwelling~~] unit" means a home, mobile home, duplex unit, apartment unit, condominium unit, or any dwelling unit in a multiunit residential structure. It also means a "dwelling" as defined by Section 92.001.

(3) "Hearing-impaired tenant" means a tenant with:

(A) a hearing impairment of such severity that the tenant must depend on visual methods to communicate; or

(B) a hearing impairment that results in a loss of hearing function to the tenant so that the tenant:

(i) relies on residual hearing; and

(ii) may depend on visual methods to communicate.

(4) "Smoke detector" means a smoke detector that satisfies the requirements of Section 92.254.

1           (5) "Visual alarm smoke detector" means a smoke  
2 detector that satisfies the requirements of Section 92.2545.

3           SECTION 2. Section 92.252(a), Property Code, is amended to  
4 read as follows:

5           (a) The duties of a landlord and the remedies of a tenant  
6 under this subchapter are in lieu of common law, other statutory  
7 law, and local ordinances regarding a residential landlord's duty  
8 to install, inspect, or repair a smoke detector or visual alarm  
9 smoke detector in a dwelling unit. However, this subchapter does  
10 not:

11           (1) affect a local ordinance adopted before September  
12 1, 1981, that requires landlords to install smoke detectors or  
13 visual alarm smoke detectors in new or remodeled dwelling units  
14 before September 1, 1981, if the ordinance conforms with or is  
15 amended to conform with this subchapter;

16           (2) limit or prevent adoption or enforcement of a  
17 local ordinance relating to fire safety as a part of a building,  
18 fire, or housing code, including any requirements relating to the  
19 installation of smoke detectors or visual alarm smoke detectors or  
20 the type of smoke detectors or visual alarm smoke detectors;

21           (3) otherwise limit or prevent the adoption of a local  
22 ordinance that conforms to this subchapter but which contains  
23 additional enforcement provisions, except as provided by  
24 Subsection (b); or

25           (4) affect a local ordinance that requires regular  
26 inspections by local officials of smoke detectors or visual alarm  
27 smoke detectors in dwelling units and that requires smoke detectors

1 or visual alarm smoke detectors to be operational at the time of  
2 inspection.

3 SECTION 3. Section 92.253(a), Property Code, is amended to  
4 read as follows:

5 (a) This subchapter does not apply to:

6 (1) a dwelling unit that is occupied by its owner, no  
7 part of which is leased to a tenant;

8 (2) a dwelling unit in a building five or more stories  
9 in height in which smoke detectors are required or regulated by  
10 local ordinance; or

11 (3) a dwelling unit in an institution or an assisted  
12 living facility licensed under Chapter 242 or 247, Health and  
13 Safety Code [~~nursing or convalescent home licensed by the Texas~~  
14 ~~Department of Health and certified to meet the Life Safety Code~~  
15 ~~under federal law and regulations~~].

16 SECTION 4. Subchapter F, Chapter 92, Property Code, is  
17 amended by adding Section 92.2545 to read as follows:

18 Sec. 92.2545. VISUAL ALARM SMOKE DETECTOR. (a) A landlord  
19 shall, on or before the 15th day after the date of a request by a  
20 hearing-impaired tenant, install one visual alarm smoke detector in  
21 each separate bedroom that is occupied by a hearing-impaired tenant  
22 or occupant in a dwelling unit. The visual alarm smoke detector may  
23 be powered by battery or alternating current. The tenant must  
24 purchase and provide, at the tenant's expense, the visual alarm  
25 smoke detector. At the landlord's option and with the prior  
26 approval of the tenant, the landlord may purchase the visual alarm  
27 smoke detector at the landlord's expense or may allow the tenant to

1 reimburse the landlord for the purchase of the detector. The  
2 landlord shall pay the cost of installing the visual alarm smoke  
3 detector. The hearing-impaired tenant may require the landlord to  
4 install additional visual alarm smoke detectors if the tenant pays  
5 for both the purchase price of the visual alarm smoke detectors and  
6 reasonable installation costs. A landlord is not required to  
7 install a visual alarm smoke detector for a guest of a tenant.

8 (b) A visual alarm smoke detector must meet the requirements  
9 of Sections 92.254(a)(1), (3), (4), and (5).

10 (c) In a civil action that arises from personal injury,  
11 death, or property damage sustained by a hearing-impaired tenant or  
12 occupant as a result of fire and that alleges the landlord failed to  
13 provide an adequate fire warning, it is an affirmative defense that  
14 the landlord installed a visual alarm smoke detector in accordance  
15 with Section 92.257 before the fire.

16 (d) When permanently vacating a dwelling, a  
17 hearing-impaired tenant is entitled to retain a visual alarm smoke  
18 detector that was purchased at the tenant's expense and may require  
19 the landlord, at the landlord's expense, to disconnect and remove  
20 the visual alarm smoke detector.

21 (e) For purposes of this section, a hearing-impaired tenant  
22 or occupant occupies only one bedroom.

23 SECTION 5. Section 92.257, Property Code, is amended to  
24 read as follows:

25 Sec. 92.257. INSTALLATION PROCEDURE. (a) Subject to  
26 Subsections (b) and (c), a smoke detector or visual alarm smoke  
27 detector must be installed according to the manufacturer's

1 recommended procedures.

2 (b) A smoke detector or visual alarm smoke detector must be  
3 installed on a ceiling or wall. If on a ceiling, it must be no  
4 closer than four [~~six~~] inches to a wall. If on a wall, it must be no  
5 closer than four [~~six~~] inches and no farther than 12 inches from the  
6 ceiling.

7 (c) A smoke detector or visual alarm smoke detector may be  
8 located other than as required by Subsection (b) if a local  
9 ordinance or a local or state fire marshal approves.

10 SECTION 6. Section 92.258(d), Property Code, is amended to  
11 read as follows:

12 (d) The landlord must comply with the tenant's request for  
13 inspection or repair on or before the 15th day after the date of the  
14 tenant's request [~~within a reasonable time, considering the~~  
15 ~~availability of material, labor, and utilities~~].

16 SECTION 7. Subchapter F, Chapter 92, Property Code, is  
17 amended by adding Section 92.2581 to read as follows:

18 Sec. 92.2581. VISUAL ALARM SMOKE DETECTOR INSPECTION AND  
19 REPAIR. (a) The landlord shall inspect and repair a visual alarm  
20 smoke detector according to this section.

21 (b) The landlord shall determine that the visual alarm smoke  
22 detector is in good working order at the time of installation, or at  
23 the beginning of the tenant's possession if the detector was  
24 installed before that time. The determination of good working  
25 order shall be made by testing the visual alarm smoke detector with  
26 smoke, by operating the testing button on the smoke detector, or by  
27 following other recommended test procedures of the manufacturer for

1 the particular model.

2 (c) During the term of a lease or during a renewal or  
3 extension, the landlord has a duty to inspect and repair a visual  
4 alarm smoke detector, but only if the tenant gives the landlord  
5 notice of a malfunction or requests to the landlord that the visual  
6 alarm smoke detector be inspected or repaired. This duty does not  
7 exist with respect to damage or a malfunction caused by the tenant,  
8 the tenant's family, or the tenant's guests or invitees during the  
9 term of the lease or a renewal or extension, except that the  
10 landlord has a duty to repair or replace the visual alarm smoke  
11 detector if the tenant pays in advance the reasonable repair or  
12 replacement cost, including labor, materials, taxes, and overhead.

13 (d) The landlord must comply with the tenant's request for  
14 inspection or repair on or before the 15th day after the date of the  
15 tenant's request.

16 (e) The landlord has met the duty to inspect and repair if  
17 the visual alarm smoke detector is in good working order after the  
18 landlord tests it with smoke, operates the testing button on it, or  
19 follows other recommended test procedures of the manufacturer for  
20 the particular model.

21 (f) The landlord is not obligated to provide batteries for a  
22 battery-operated visual alarm smoke detector after it has been  
23 tested by the landlord as required by Subsection (b).

24 (g) A visual alarm smoke detector that is in good working  
25 order at the time it must be tested under Subsection (b) is presumed  
26 to be in good working order until the tenant requests repair of it  
27 as provided by this subchapter.

1 SECTION 8. Section 92.259(a), Property Code, is amended to  
2 read as follows:

3 (a) A landlord must comply with this subchapter but is only  
4 liable according to this subchapter if:

5 (1) the landlord did not install a smoke detector at  
6 the time of initial occupancy by the tenant as required by this  
7 subchapter or a municipal ordinance permitted by this subchapter or  
8 the landlord did not install a visual alarm smoke detector at the  
9 time of initial occupancy by the tenant as required by this  
10 subchapter or a municipal ordinance permitted by this subchapter;  
11 or

12 (2) the landlord does not install, inspect, or repair  
13 the smoke detector or visual alarm smoke detector on or before the  
14 seventh day after the date the tenant gives the landlord written  
15 notice that the tenant may exercise his remedies under this  
16 subchapter if the landlord does not comply with the request within  
17 seven days.

18 SECTION 9. Section 92.2611(c), Property Code, is amended to  
19 read as follows:

20 (c) A tenant is not liable for damages suffered by the  
21 landlord if the damage is caused by the landlord's failure to repair  
22 the smoke detector:

23 (1) on or before the seventh day after the date the  
24 tenant requested the repair in writing under Section 92.259; or

25 (2) on or before the 15th day after the date the tenant  
26 otherwise requested the repair [~~within a reasonable time after the~~  
27 ~~tenant requests it to be repaired, considering the availability of~~

1 ~~material, labor, and utilities]~~.

2 SECTION 10. Section 92.255(b), Property Code, is repealed.

3 SECTION 11. Section 92.2545, Property Code, as added by  
4 this Act, applies only to a civil action that accrues on or after  
5 the effective date of this Act. A civil action that accrued before  
6 the effective date of this Act is governed by the law applicable to  
7 the action immediately before the effective date of this Act, and  
8 that law is continued in effect for that purpose.

9 SECTION 12. This Act takes effect September 1, 2005.